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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DERRICK SIMPSON,

Plaintiff,

v.

F. AGATONE, et al.,

Defendants.

Case No. 2:15-cv-00254-RFB-CWH

ORDER

Presently before the court is pro se plaintiff Derrick Simpson's motion for leave to file second amended complaint (ECF No. 19).

On September 5, 2018, the undersigned entered a screening order and report and recommendation regarding Simpson's amended complaint. (Screening Order (ECF No. 16).) The court recommended that some claims should proceed but that other claims should be dismissed, some with leave to amend, and others without leave to amend. (*Id.*) Simpson did not object to the screening order, and the United States district judge assigned to this case adopted the screening order in full. (Order (ECF No. 20).) The district judge ordered as follows:

- the portion of claim one alleging an excessive force claim will proceed against Officer Spurling;
- the portion of claim one alleging a false arrest claim will proceed against Officer Spurling and Officer Carter;
- Simpson's Fifth Amendment claim (claim two) against Officers Carter, Spurling, Hatchett, Thomas, Agatone, Maldonado, and Clark County are dismissed, with leave to amend;
- Simpson's Thirteenth Amendment claim (claim three) against Clark County and the Las Vegas Metropolitan Police Department are dismissed, without leave to amend;

- 1 • Simpson's Sixth Amendment claim (claim four) against Clark County is
- 2 dismissed, with leave to amend;
- 3 • Simpson's Eighth Amendment claim (claim five) is dismissed, without leave to
- 4 amend;
- 5 • Simpson's Fourteenth Amendment claim (claim six) against Spurling, Carter,
- 6 Maldonado, Hatchett, Agatone, Thomas, the LVMPD, and Clark County is
- 7 dismissed, with leave to amend; and
- 8 • this case is dismissed as to Naphcare for failure to state a claim, with leave to
- 9 amend.

10 (Order (ECF No. 20).) Based on this order, these are the operative claims in this case.

11 After the deadline for objecting to the screening order had expired, but before the district
12 judge adopted the undersigned's screening order and entered the order cited above, Simpson filed
13 a motion to file a second amended complaint. Given this sequence of events, it is unclear to the
14 undersigned whether Simpson intends to proceed with the amended complaint that was approved
15 subject to the court's modifications, or whether he seeks to amend once again. The court
16 therefore will deny the motion for leave to file second amended complaint without prejudice.

17 If Simpson still seeks to file a second amended complaint, he must renew his motion to
18 amend by August 22, 2019. Simpson is advised that if he files a second amended complaint, the
19 original complaint (ECF No. 1-1) and amended complaint (ECF No. 17) no longer serve any
20 function in this case. As such, if Simpson files a second amended complaint, each claim and the
21 involvement of each defendant must be alleged sufficiently. The court cannot refer to a prior
22 pleading or to other documents to make Simpson's second amended complaint complete. The
23 second amended complaint must be complete in and of itself without reference to prior pleadings
24 or to other documents. If Simpson chooses to file a second amended complaint, the court will
25 screen the second amended complaint in a separate screening order as required by 28 U.S.C. §§
26 1915(e)(2) and 1915A. The screening process will take several months.

27 Alternatively, by August 22, 2019, Simpson may notify the court of his decision not to file
28 a second amended complaint and to proceed on the operative claims. If Simpson decides to

1 proceed on the operative claims, the court will order the United States Marshal to serve
2 Simpson's amended complaint.


3 IT IS THEREFORE ORDERED that plaintiff Derrick Simpson's motion for leave to file
4 second amended complaint (ECF No. 19) is DENIED without prejudice.

5 IT IS FURTHER ORDERED that by August 22, 2019, Simpson must (1) renew his
6 motion for leave to file second amended complaint, or (2) file a notice stating that he intends to
7 proceed on the amended complaint.

8 IT IS FURTHER ORDERED that the clerk of court must send Simpson courtesy copies of
9 the following documents:

- 10 • The docket sheet;
- 11 • Screening order (ECF No. 16);
- 12 • Order (ECF No. 20) (the district judge's order adopting the undersigned's report
13 and recommendation and explaining which claims will proceed);
- 14 • Amended complaint (ECF No. 17) (the operative complaint, subject to the court's
15 modifications as explained in the screening order (ECF No. 16) and the district
16 judge's order (ECF No. 20)); and
- 17 • the approved form for filing a § 1983 complaint and instructions for the same.

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19 DATED: July 22, 2019

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22 C.W. HOFFMAN, JR.
23 UNITED STATES MAGISTRATE JUDGE
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